Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 26 April 2021 – Tuesday 27 April 2021

Virtual Hearing

Name of registrant:	Helena Anne McClurg
NMC PIN:	78I1072E
Part(s) of the register:	Nursing RN 3 - Mental Health (2 December 1981)
Area of registered address:	Norfolk
Type of case:	Misconduct
Panel members:	Raymond Marley (Chair, Lay member) Ross Cheape (Registrant member) Sue Davie (Lay member)
Legal Assessor:	Mark Ruffell
Panel Secretary:	Graeme King
Nursing and Midwifery Council:	Represented by Stephen Earnshaw, Case Presenter
Mrs McClurg:	Not present or represented
Facts proved by admission	n/a
Facts proved	1(i), 1(ii) and 1(iii)
Facts not proved	n/a
Fitness to Practise	**Impaired**
Sanction	**Striking off order**
Interim Order	**Interim suspension order (18 months)**

Details of charges as amended

1. That you, a registered nurse, physically abused Resident A in that:

    i. On the 12th April 2018, you pulled Resident A from the floor to a standing position by the arm at the wrist.

    ii. On the 12th April 2018, you forcibly pulled Resident A from the floor to a sitting position by the back of the neck

    iii. On the 27th July 2018, you restrained Resident A to the corner of a room by wedging a heavy table against her chair and placing your arm around her waist.

And in the light of the above, your fitness to practise is impaired by virtue of your misconduct.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs McClurg was not in attendance and that a Notice of Hearing had been sent to Mrs McClurg's registered email address on 25 March 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs McClurg's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Earnshaw, on behalf of the Nursing and Midwifery Council (NMC), submitted that the Notice of Hearing complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs McClurg had been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs McClurg

The panel next considered whether it should proceed in the absence of Mrs McClurg. It had regard to Rule 21 and heard the submission of Mr Earnshaw who invited the panel to continue in the absence of Mrs McClurg.

Mr Earnshaw referred the panel to the email dated 13 July 2019 from Mrs McClurg to the NMC that stated:

> *'I [Mrs McClurg] have no wish to pursue with yourselves [NMC] this case any further and would simply ask that you remove my name from the Register.'*

Mr Earnshaw also referred the panel to an email dated 9 May 2020 from Mrs McClurg's representative at previous hearings confirming that she '*does not want anything more to do with this situation*'.

Mr Earnshaw submitted that given the ongoing disengagement by Mrs McClurg, there is no reason to suspect adjourning this hearing would secure her attendance at a later hearing. He submitted that there are three witnesses prepared to give live evidence at this hearing and to delay would cause them inconvenience. He also submitted that the incidents took place in 2018 and any delay may impact a witness recollection. Mr Earnshaw submitted that in these circumstances, the panel could consider that Mrs McClurg had voluntarily absented herself from these proceedings.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL.

The panel has decided to proceed in the absence of Mrs McClurg. In reaching this decision, the panel considered the submissions of Mr Earnshaw, the email dated 13 July 2019 from Mrs McClurg and the advice of the legal assessor. It had particular regard to the factors set out in the decisions of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 as well as to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs McClurg;
- Mrs McClurg has not engaged with the NMC for some 20 months and had previously advised the NMC that she would not engage with proceedings;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Three witnesses are scheduled to attend by video link to give evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs McClurg in proceeding in her absence. Although the evidence upon which the NMC relies has been sent to her registered email address, she will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies.

In these circumstances, the panel has decided that it is fair and appropriate to proceed in the absence of Mrs McClurg. The panel will draw no adverse inference from Mrs McClurg's absence in its findings of fact.

Decision and reasons on application to amend charge 1(ii)

Mr Earnshaw drew the panel's attention to an apparent error in the wording of charge 1(ii).

Original charge:
On the 12th April 2018, you forcibly pulled Registrant A from the floor to a sitting position by the back of the neck.

Mr Earnshaw submitted that this was clearly a simple typographical error and applied to amend charge 1(ii) as follows:

Proposed charge:
On the 12th April 2018, you forcibly pulled ~~Registrant~~ Resident A from the floor to a sitting position by the back of the neck.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such an amendment would have no substantial impact on any party. The panel was satisfied that there would be no prejudice to Mrs McClurg and no injustice would be caused to any party by the proposed amendment being allowed. It therefore allowed the amendment to correct the typographical error in charge 1(ii).

Decisions and reasons on applications pursuant to Rule 31

On Day 1 of the hearing Mr Earnshaw made an application to admit the written hearsay statements of Witness 4 under Rule 31. He drew the panel's attention to the cases of *El*

Karout v NMC [2019] EWHC 28 (Admin*), NMC v Ogbona* [2010] EWCH 1216 and *Thorneycroft v NMC* [2014] EWHC 1565 (Admin*)* and the factors which a panel is required to consider when admitting hearsay evidence.

Witness 4 had been due to attend the hearing to give live evidence, however the panel had sight of a medical certificate stating that she was unable to attend for health reasons.

Mr Earnshaw explained that the witness statement of Witness 4 had been included in the bundle that had been sent to Mrs McClurg.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings and made reference to the relevant case law.

The panel considered the written statement of Witness 4, who was a Team Leader at NHS Continuing Care at the time of the incidents. It considered the statement was relevant and contained a declaration. It considered the statement to provide important contextual background to the incident and noted that the information in the statement was, in part, corroborated by other evidence in this case. The panel determined that there would be no unfairness to any party to submit the written statement of Witness 4 and the panel would benefit from having the information contained in this witness statement before it.

In these circumstances, the panel determined it would be fair and relevant to accept into evidence the written statement of Witness 4 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Earnshaw.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

Background

Mrs McClurg was referred to the NMC by the Care Quality Commission (CQC) on 19 October 2018. Mrs McClurg was employed as a Registered Nurse at Alexandra House Nursing and Residential Home (the Home). It was alleged that Mrs McClurg had:

- On the 12th April 2018, pulled Resident A from the floor to a standing position by the arm at the wrist.

- On the 12th April 2018, forcibly pulled Resident A from the floor to a sitting position by the back of the neck.

- On the 27th July 2018, restrained Resident A to the corner of a room by wedging a heavy table against her chair and placing her arm around her waist.

The CQC rated the Home as inadequate in July 2018 and cancelled its registration.

Mrs McClurg pleaded guilty to one count of assault by beating arising out of the incident on 12 April 2018 and received a conditional discharge at Great Yarmouth Magistrates' Court in February 2019

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence, available at this time, which the NMC had provided.

Having admitted the witness statements into evidence, the panel considered the evidence of the witnesses and made the following conclusions:

Witness 1, Relative of Resident A

The panel found Witness 1 to be a credible and reliable witness. It considered her to present a consistent and detailed version of events in relation to charge 1(i) and (ii). The panel noted that Witness 1 was a relative of Resident A, however considered her evidence to be dispassionate. The panel noted that as a care worker herself, Witness 1 was able to draw on her experience and describe proper standards of practice which contrast with her account of Mrs McClurg's actions.

Witness 2, QA Officer at Norfolk County Council at the time of charge 1(iii)

The panel found Witness 2 to be a credible and reliable witness. It considered her to present a consistent and detailed version of events in relation to charge 1(iii), and noted that her evidence matched the quality assurance report shortly after the incident. The panel considered Witness 2 to display professionalism in her assessment of the incident and noted her honesty when unable to answer questions.

Witness 3, Manager of the Home at the time of the incidents

The panel considered that Witness 3 made every effort to assist it, however it was left with some concerns as Witness 3 gave evidence that was not mentioned by other witnesses. The panel considered Witness 3 to have presented an honest recollection of working with Mrs McClurg.

The panel then considered each of the charges and made the following findings:

Charge 1(i)

1. That you, a registered nurse, physically abused Resident A in that:

   (i) On the 12th April 2018, you pulled Resident A from the floor to a standing position by the arm at the wrist.

This charge is found proved.

In consideration of this charge, the panel had regard to the credible and detailed evidence of Witness 1. The panel noted that Witness 1's oral evidence was consistent with the police statement she made in September 2018 in relation to this charge. It noted that Mrs McClurg had admitted to either charge 1(i) or (ii) at Great Yarmouth Magistrates' Court, having changed her plea from not guilty to guilty at the start of her trial. The panel had regard to Resident A's care plan that mentioned that she often lay on the ground. Following a report from a Carer, Witness 3 spoke to Mrs McClurg who accepted that she had pulled Resident A up by the hand and apologised. According to Witness 3, this was '*around the same time'* as Witness 1 had reported her concerns.

Charge 1(ii)

1. That you, a registered nurse, physically abused Resident A in that:

   (ii) On the 12th April 2018, you forcibly pulled Resident A from the floor to a sitting position by the back of the neck

This charge is found proved.

In consideration of this charge, the panel had regard to the credible and detailed evidence of Witness 1. The panel noted that Witness 1's oral evidence was consistent with the police statement she made in September 2018 in relation to this charge. It noted that Mrs McClurg had admitted to either charge 1(i) or (ii) at Great Yarmouth Magistrates' Court, having changed her plea from not guilty to guilty at the start of her

trial. The panel had regard to Resident A's care plan that mentioned that she often lay on the ground.

Charge 1(iii)

1. That you, a registered nurse, physically abused Resident A in that:

   (iii) On the 27th July 2018, you restrained Resident A to the corner of a room by wedging a heavy table against her chair and placing your arm around her waist.

This charge is found proved.

In consideration of this charge, the panel had regard to the credible and detailed evidence of Witness 2, which is supported by the written evidence of Witness 4 and is supported in parts by the oral evidence of Witness 3. The panel considered that Witness 2 had made a report shortly after the incident and that her evidence at this hearing was consistent with that report.

In finding all charges proved, the panel considered that it did not have any evidence or submissions to suggest an alternate narrative or course of events than those provided by the witnesses.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs McClurg's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs McClurg's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Mr Earnshaw invited the panel to find that the charges found proved amount to misconduct. He submitted that the charges demonstrated '*deplorable*' practice in relation to a vulnerable patient. Mr Earnshaw submitted that charges 1(i) and (ii) are particularly serious and both involved Mrs McClurg acting well outside of what can be considered acceptable practice. Further, Mrs McClurg's serious professional misconduct had resulted in distress being caused to Resident A and had the potential to cause her real harm. Mr Earnshaw drew the panel's attention to the specific areas of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ('the Code') which, in his submissions, Mrs McClurg had breached.

Submissions on impairment

Mr Earnshaw moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included

the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen* v *General Medical Council* [2008] EWHC 581 (Admin).

Mr Earnshaw submitted that the panel must consider whether Mrs McClurg's conduct is easily remediable and whether or not there is a risk of her behaving in a similar way in the future.

Mr Earnshaw submitted that Mrs McClurg put Resident A at risk of harm by way of her unacceptable conduct. Further, Mrs McClurg brought the nursing profession into disrepute by failing to demonstrate the standards expected of a Registered Nurse. Mr Earnshaw further submitted that the public would be concerned to hear that a nurse had so clearly failed to uphold her position as a Registered Nurse by repeatedly treating a vulnerable patient so poorly. He submitted that Mrs McClurg's misconduct had breached the fundamental tenets of the profession.

Mr Earnshaw submitted that Mrs McClurg's conduct is not easily remediable due to the extent of how far short it fell of the accepted standard. He further submitted that Mrs McClurg had not provided the panel with any information to suggest that she has acknowledged the seriousness of the charges, adequately reflected on the incidents or had taken any steps to remediate her poor practice.

Mr Earnshaw asked the panel to consider what a member of the public would think of a nurse who had assaulted a vulnerable patient and submitted that a finding of impairment is necessary on public interest grounds as well as public protection.

Mr Earnshaw concluded by inviting the panel to find that Mrs McClurg's fitness to practise is currently impaired by way of her misconduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mrs McClurg's actions did fall significantly short of the standards expected of a registered nurse, were serious and amounted to a breach of the Code. Specifically:

> ***'1 - Treat people as individuals and uphold their dignity***
>
> *To achieve this, you must:*
>
> *1.1 - Treat people with kindness, respect and compassion*
>
> *1.2 - Make sure you deliver the fundamentals of care effectively*
>
> *1.5 - Respect and uphold people's human rights*
>
> ***2 - Listen to people and respond to their preferences and concerns***
>
> *To achieve this, you must:*
>
> *2.5 - Respect, support and document a person's right to accept or refuse care and treatment*
>
> *2.6 -Recognise when people are anxious or in distress and respond compassionately and politely*

*4 - **Act in the best interests of people at all times***

To achieve this, you must:

4.1 - Balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment

4.3 - Keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process

7 - Communicate clearly

To achieve this, you must:

7.2 - Take reasonable steps to meet people's language and communication needs, providing, wherever possible, assistance to those who need help to communicate their own or other people's needs

8 - Work cooperatively

To achieve this, you must:

8.5 - Work with colleagues to preserve the safety of those receiving care

20 - Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 - Keep to and uphold the standards and values set out in the Code

20.3 - Be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 - Keep to the laws of the country in which you are practising

20.5 - Treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.8 - Act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, it considered that Mrs McClurg's failings were serious, put a vulnerable patient at risk of harm and had taken place three times in a relatively short period. The panel found that Mrs McClurg's actions, individually and collectively, fell well short of the conduct and standards expected of a nurse and amounted to serious misconduct. The panel considered that all the witness evidence in this case was consistent insofar as saying Mrs McClurg had acted well outside of what could be considered acceptable practice. The panel also noted that Mrs McClurg had pleaded guilty to assaulting Resident A and had received a criminal conviction for this. The panel considered that Resident A was put at a real risk of harm as a direct result of Mrs McClurg's misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs McClurg's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their

lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *…*

The panel found limbs a) to c) of *Grant* to be engaged in this case. It noted there are no dishonesty concerns.

The panel found that Resident A was put at risk of harm as a result of Mrs McClurg's misconduct. Mrs McClurg's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges of assaulting a vulnerable resident to constitute misconduct.

The panel carefully considered the evidence before it in determining whether or not Mrs McClurg has remedied her practice.

The panel considered that Mrs McClurg's misconduct in relation to all charges is potentially remediable. However, it did not consider Mrs McClurg to have demonstrated any insight into the concerns raised in this case. The panel noted that Mrs McClurg had presented an inconsistent position throughout the criminal proceedings and had changed her plea from not-guilty to guilty at the beginning of the trial in February 2019. However, in Mrs McClurg's email dated 13 July 2019 to the NMC she stated that she would '*refute each of these charges against me'*. It considered that Mrs McClurg had not appropriately acknowledged her poor practice and the effect it did and could have had on Resident A. The panel had no information before it to demonstrate any reflection from Mrs McClurg on the incident, nor did the panel have sight of any attempts at remediation. Due to a lack of insight, reflection and remediation, the panel considered that there is a risk of Mrs McClurg's misconduct being repeated. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that the charges found proved are serious. They include a criminal conviction for assaulting a vulnerable person and public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore also finds Mrs McClurg's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs McClurg's fitness to practise is currently impaired.

Sanction

The panel has considered this case and has decided to make a striking-off order and directs the Registrar to strike Mrs McClurg off the register. The effect of this order is that the NMC register will show that Mrs McClurg has been struck-off.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Earnshaw submitted that a striking-off order is the only appropriate order in the circumstances. He submitted that Mrs McClurg's misconduct was serious and involved the assault of a vulnerable, frail and learning disabled resident. Further, a member of the public would be outraged at Mrs McClurg's actions. Mr Earnshaw submitted that

there is no evidence of remediation or reflection to assist the panel and that Mrs McClurg had previously expressed her intention to leave the nursing profession.

Decision and reasons on sanction

Having found Mrs McClurg's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, it may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mrs McClurg's misconduct was repeated, caused Resident A distress and put her at risk of harm;
- Resident A was vulnerable, frail and learning disabled;
- Mrs McClurg had abused her position of trust;
- Mrs McClurg's inconsistent position on responsibility;
- Mrs McClurg's actions were a failing of fundamental nursing practice;
- Mrs McClurg's lack of insight and remorse; and
- Mrs McClurg's lack of engagement with these proceedings.

The panel took into account the following mitigating feature:

- Witness 3 attested to Mrs McClurg being a nurse held in high regard prior to these incidents

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and would not protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Mrs McClurg's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs McClurg's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel then considered the imposition of a conditions of practice order. However, given the lack of insight or remediation, the panel was of the view that it would be difficult to formulate conditions that would ensure the safety of the public. The panel concluded that the placing of conditions on Mrs McClurg's registration would not adequately address the seriousness of the charges in this case. It noted Mrs McClurg's on-going disengagement with the NMC, and her previous desire to leave the nursing profession, therefore could not be satisfied that conditions of practice would be practicable or workable.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel determined that Mrs McClurg's actions were not a single instance of misconduct and had regard to the three separate charges found proved. The panel has seen no evidence that Mrs McClurg has insight or remorse for her misconduct, or that she had remedied her practice, therefore considered there to be a risk of repetition. It considered that Mrs McClurg's conduct was a significant departure from the standards expected of a Registered Nurse. The panel considered that a suspension order would not sufficiently mark the severity of Mrs McClurg having received a criminal conviction for the assault of a very vulnerable and frail patient. In this case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction from either a public protection or public interest perspective.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mrs McClurg's actions were significant departures from the standards expected of a Registered Nurse and are fundamentally incompatible with her remaining on the register. The panel considered that Mrs McClurg's actions were of the utmost seriousness and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. It considered that a well-informed member of the public would be shocked if anything less than a striking off order was imposed.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. The panel considered that this order was necessary to

mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a Registered Nurse.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs McClurg's interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Earnshaw. He submitted that an interim suspension order is necessary for a period of 18 months.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Mrs McClurg is sent the decision of this hearing in writing.

This decision will be confirmed to Mrs McClurg in writing.

That concludes this determination.